Supreme Court, U.S.
FILED
OCT 4 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 90-382 (2)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

VILLAGE OF MILFORD,

Petitioner,

v.

PROFESSIONAL LAWN CARE ASSOCIATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

JOSEPH D. LONARDO
VORYS, SATER, SEYMOUR AND PEASE
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-6311

Attorneys for Respondent

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

BEST AVAILABLE COPY

21

QUESTION PRESENTED FOR REVIEW

Whether a local ordinance regulating the use of pesticides is preempted under the supremacy clause when the express language, legislative history, and administrative construction of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, indicate Congress' intent to preclude local regulation of pesticide use.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
A. Nature Of The Case And Disposition Below	1
B. History And Operation of FIFRA	2
C. Milford Ordinance No. 197	5
SUMMARY OF ARGUMENT	6
ARGUMENT	6
I. THE CONFLICT ALLEGED IN THE PETITION IS NEITHER SIGNIFICANT NOR RIPE FOR REVIEW BY THIS COURT	6
II. THE COURT BELOW APPLIED ESTABLISHED PREEMPTION PRINCIPLES AND REACHED THE FAIR AND CORRECT RESULT	9
CONCLUSION	14

TABLE OF AUTHORITIES

Cases	Page
Central Maine Power Co. v. Town of Lebanon, 571 A.2d 1189 (Me. 1990)	7
COPARR, Ltd. v. City of Boulder, 735 F. Supp. 363 (D. Colo. 1989), *appeal pending*, No. 89-1341 (10th Cir.)	7
Hodel v. Virginia Surface Mining & Reclamation Ass'n, 452 U.S. 264 (1981)	10
Jones v. Rath Packing Co., 430 U.S. 519 (1977)	10
Long Island Pest Control Ass'n v. Town of Huntington, 72 Misc. 2d 1031, 341 N.Y.S.2d 93 (Sup. Ct. 1973), *aff'd*, 351 N.Y.S.2d 945 (App. Div. 1974)	7
Maryland Pest Control Association v. Montgomery County, 646 F. Supp. 109 (D. Md. 1986), *aff'd*, 822 F.2d 55 (4th Cir. 1987)	7,8,11
Maryland v. Baltimore Radio Show, 338 U.S. 912 (1950)	9
McCray v. New York, 461 U.S. 961 (1983)	8
Mortier v. Town of Casey, 154 Wis. 2d 18, 452 N.W.2d 555 (1990), *cert. petition filed*, No. 89-1905 (June 5, 1990)	7
New York State Pesticide Coalition, Inc. v. Jorling, 874 F.2d 115 (2d Cir. 1989)	14
Organized Migrants in Community Action, Inc. v. Brennan, 520 F.2d 1161 (D.C. Cir. 1975)	4
People ex rel. Deukmejian v. County of Mendocino, 36 Cal. 3d 476, 204 Cal. Rptr. 897, 683 P.2d 1150 (1984)	7
Professional Lawn Care Association v. Village of Milford, 909 F.2d 929 (6th Cir. 1990)	6,8
Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984)	3,12

Table of Authorities Continued

Page

Statutes

7 U.S.C. § 136 4
7 U.S.C. § 136(aa) 10
7 U.S.C. § 136(e) 13
7 U.S.C. § 136(ee) 13
7 U.S.C. § 136b(a) 13
7 U.S.C. § 136f(b) 10
7 U.S.C. § 136r(b) 10
7 U.S.C. § 136t(b) 10
7 U.S.C. § 136v 10
7 U.S.C. § 136v(a) 4
Mich. Comp. Laws § 286.551 *et seq.* (1979) 4
Pub. L. No. 80-104, 61 Stat. 163 (1947) 2
Pub. L. No. 92-516, 86 Stat. 973 (1972) 3
Village of Milford Ordinance No. 197 5,6,12

Legislative Materials

Assembly Bill No. 2635, 1984 Cal. Laws ch. 1386, Cal. Code § 11601.1, §3 8
118 Cong. Rec. S15893 (daily ed. Sept. 26, 1972) 11
H.R. Rep. No. 313, 80th Cong., 2d Sess., *reprinted in* 1947 U.S. Code Cong. Serv. 1200-01 2
H.R. Rep. No. 511, 92d Cong., 1st Sess. (1971) ... 10
S. Rep. No. 838, 92d Cong., 2d Sess., *reprinted in* 1972 U.S. Code Cong. & Admin. News 3993 3,10,11

Administrative Materials

40 C.F.R. §§ 152-173 (1988) 4
40 C.F.R. § 171 (1988) 13

Table of Authorities Continued

	Page
EPA Submission & Approval of State Plans for Certification of Commercial and Private Applicators of Restricted Use Pesticides, 40 Fed. Reg. 11697, 11700 (1975) (to be codified at 40 C.F.R. § 171)	7
EPA Worker Protection Standards for Agricultural Pesticides, 53 Fed. Reg. 25970 (to be codified at 40 C.F.R. §§ 156 and 170)	13
Mich. Admin. Code r. 285.636.1 *et seq.* (1979)	4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-382

VILLAGE OF MILFORD,

Petitioner,

v.

PROFESSIONAL LAWN CARE ASSOCIATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

A. Nature Of The Case And Disposition Below

This case arises from the enactment of a local ordinance regulating the use of materials containing pesticides within the Village of Milford, Michigan. Respondent, the Professional Lawn Care Association of America ("PLCAA"),[1] filed its complaint on May

[1] The PLCAA is a national trade association which represents approximately 1,400 commercial lawn care companies.

5, 1989 in the United States District Court for the Eastern District of Michigan. The complaint alleged that Milford Ordinance No. 197, enacted by petitioner the Village of Milford, Michigan ("Milford"), violates the supremacy clause of the United States Constitution because FIFRA completely preempts the regulation of pesticides by local political subdivisions.

On August 24, 1989, following oral argument on cross-motions for summary judgment, District Judge Horace W. Gilmore ruled from the bench that the PLCAA's motion for summary judgment would be granted. App. 27a-32a. An order memorializing that decision was filed on September 15, 1989. App. 33a-34a.

On August 1, 1990, a panel of the United States Court of Appeals for the Sixth Circuit unanimously affirmed. App. 1a-26a. In an exhaustive opinion, the Court concluded that the clear meaning of the statute, on its face and based upon precedent defining its scope, precluded local regulation of pesticide use, and that the legislative history of FIFRA confirmed Congress' preemptive intent.

B. History And Operation of FIFRA

FIFRA was enacted on June 25, 1947. *See* Pub. L. No. 80-104, 61 Stat. 163 (1947). FIFRA was "intended to replace and expand the protection" afforded by the Insecticide Act of 1910, which was deemed "inadequate" because of the development of new pest control products and use of new chemical compounds. *See* H.R. Rep. No. 313, 80th Cong., 2d Sess., *reprinted in* 1947 U.S. Code Cong. Serv. 1200-01. Nevertheless, "[a]s first enacted, FIFRA was pri-

marily a licensing and labeling statute." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991 (1984).

In 1972, Congress enacted sweeping amendments to FIFRA, *see* Federal Environmental Pesticide Control Act of 1972, Pub. L. No. 92-516, 86 Stat. 973 (1972), which were designed to "completely revise[ ]" FIFRA. S. Rep. No. 838, 92d Cong., 2d Sess., *reprinted in* 1972 U.S. Code Cong. & Admin. News 3993. This Court summarized the history and effect of the 1972 amendments as follows:

> Because of mounting public concern about the safety of pesticides and their effect on the environment and because of a growing perception that the existing legislation was not equal to the task of safeguarding the public interest, . . . Congress undertook a comprehensive revision of FIFRA through the adoption of the Federal Environmental Pesticide Control Act of 1972 . . . . The amendments transformed FIFRA from a labeling law into a comprehensive regulatory statute . . . . As amended, FIFRA regulated the use, as well as the sale and labeling, of pesticides; regulated pesticides produced and sold in both intrastate and interstate commerce; provided for review, cancellation, and suspension of registration; and gave EPA greater enforcement authority.

Ruckelshaus v. Monsanto Co., 467 U.S. at 991-92.

Before the 1972 amendments, states had exercised some regulatory authority over pesticides. The 1972 amendments, however, contained "a number of innovations to direct and strengthen federal control over

pesticides," *see Organized Migrants in Community Action, Inc. v. Brennan*, 520 F.2d 1161, 1165 (D.C. Cir. 1975), and thus totally altered the pre-existing regulatory structure. FIFRA now affords the federal Environmental Protection Agency ("EPA") broad regulatory and supervisory authority over the use and application of pesticides and analogous chemical substances. *See* 7 U.S.C. § 136 *et seq.* In furtherance of this authority, the EPA has promulgated extensive regulations, including regulations governing pesticide application. *See* 40 C.F.R. §§ 152-173 (1988).

In order to define and clarify the new allocation of regulatory power brought about by the 1972 amendments, FIFRA provides, in pertinent part:

> A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

7 U.S.C. § 136v(a).

Pursuant to the authorization contained in FIFRA, the State of Michigan enacted the Pesticide Control Act of 1976, codified at Mich. Comp. Laws § 286.551 *et seq.* (1979). The Michigan Department of Agriculture subsequently promulgated regulations governing pesticide applicators, in conformity with the requirements of the Pesticide Control Act of 1976. *See* Mich. Admin. Code r. 285.636.1 *et seq.* (1979). Thus, pesticide applicators operating in Michigan are subject to extensive regulation at both the federal and state levels.

C. Milford Ordinance No. 197

On January 27, 1986, Milford enacted Ordinance No. 197, which seeks to regulate the application of pesticides within the Village of Milford. App. 35a-40a. Ordinance No. 197 governs certain activities of "users of pesticides," a phrase defined to mean, *inter alia*: "Any person who applies or causes pesticides to be applied to property by any means where such person is engaged in applying pesticides for hire to trees, lawns, shrubs, plants, or the atmosphere." Ordinance No. 197, § 1(B)(1), App. 35a-36a. The Ordinance requires that "users of pesticides" register with Milford, *id.* § 2, App. 36a, and pay a $15 annual registration fee, along with providing certain business information and the generic chemical names of the pesticides to be applied. *Id.* § 3(A), App. 36a. In addition, the Ordinance permits residents of Milford who are "medically certified as being chemically sensitive" to place their names upon a list to be distributed to registered "users of pesticides." *Id.* § 5(A), App. 38a. Registered "users of pesticides" are then required to give 24 hours advance notice of an outdoor application to any resident on the list. *Id.*, App. 38a.

Moreover, "users of pesticides" are required to provide and place a yard marker containing the words "Chemically Treated Lawn—Keep Children and Pets Off for 72 Hours" on the subject property following an outdoor application. *See* Ordinance No. 197, § 5(B), App. 38a-39a. The yard marker must be placed "in such a manner so as to minimize unauthorized removal, but in an easily noticed location" and must be kept on the subject property for a minimum of 72 hours following the application. *Id.*, App. 39a. The specifications of the yard markers are to be deter-

mined by Milford. *Id.*, App. 39a. The Ordinance finally provides that a violator of "any of the provisions of this ordinance" shall be assessed a $25 fine for a first violation, a $50 fine for a second violation, and a $100 fine for each violation thereafter. *See id.* § 7, App. 39a.

SUMMARY OF ARGUMENT

While this case presents a significant question, that question does not presently warrant review by this Court. The decision of the United States Court of Appeals for the Sixth Circuit in this case is consistent with the only other federal court of appeals decision addressing the question, as well as the statutory interpretation of the EPA and a recent decision of the Wisconsin Supreme Court. Although contrary decisions have been reached by two state courts and a federal district court, the emerging trend in the case law is that FIFRA preempts local regulation of pesticide use.

Moreover, the courts below applied established principles of preemption analysis and reached the correct result. The express language, legislative history, and administrative construction of FIFRA reveal clearly that Congress intended to preclude regulation of pesticide use by local political subdivisions such as Milford.

ARGUMENT

I. THE CONFLICT ALLEGED IN THE PETITION IS NEITHER SIGNIFICANT NOR RIPE FOR REVIEW BY THIS COURT

The decision of the Sixth Circuit in this case, *Professional Lawn Care Association v. Village of Mil-*

ford, App. 1a, 909 F.2d 929 (6th Cir. 1990), squarely holds that FIFRA preempts the regulation of pesticide use by local political subdivisions. This ruling is consistent with the only other federal court of appeals decision on the issue, *see Maryland Pest Control Association v. Montgomery County*, 646 F. Supp. 109 (D. Md. 1986), *aff'd*, 822 F.2d 55 (4th Cir. 1987), as well as a recent decision of the Wisconsin Supreme Court, *see Mortier v. Town of Casey*, 154 Wis. 2d 18, 452 N.W.2d 555 (1990), *cert. petition filed*, No. 89-1905 (June 5, 1990),[2] and early rulings of New York state courts, *see Long Island Pest Control Ass'n v. Town of Huntington*, 72 Misc. 2d 1031, 341 N.Y.S.2d 93 (Sup. Ct. 1973), *aff'd*, 351 N.Y.S.2d 945 (App. Div. 1974). It also is consistent with the published views of the EPA. *See* 40 Fed. Reg. 11697, 11700 (1975).

To be sure, contrary decisions have been rendered by the California Supreme Court, *see People ex rel. Deukmejian v. County of Mendocino*, 36 Cal. 3d 476, 204 Cal. Rptr. 897, 683 P.2d 1150 (1984), and two courts which adopted and followed the California Supreme Court's analysis, *see COPARR, Ltd. v. City of Boulder*, 735 F. Supp. 363 (D. Colo. 1989), *appeal pending*, No. 89-1341 (10th Cir.); *Central Maine Power Co. v. Town of Lebanon*, 571 A.2d 1189 (Me. 1990).

---

[2] Respondent has been advised that the *Mortier* petition is currently pending before this Court. The issues presented in this case and in *Mortier* are substantially the same, although the factual context differs, and thus the decision on certiorari in this case should be identical to that reached in *Mortier*. Respondent agrees with Petitioner that, in the event that this Court grants the petition in *Mortier*, it should grant the petition in this case as well.

Yet the emerging trend in the case law plainly is contrary to the California Supreme Court's decision, and suggests that the current conflict will be both insignificant and short-lived.

Both the lower court in this case, and the federal courts in *Maryland Pest Control Ass'n*, carefully considered and rejected the conclusions of the California Supreme Court. *See Professional Lawn Care Ass'n v. Village of Milford*, App. 8a-11a; *Maryland Pest Control Ass'n v. Montgomery County*, 646 F. Supp. 109, 111 n.2 (D. Md. 1986), *aff'd*, 822 F.2d 55 (4th Cir. 1987).[3] If the Tenth Circuit follows the decisions of its sister circuits in resolving the appeal in *COPARR, Ltd. v. City of Boulder*, No. 89-1341, then no conflict will exist among the federal courts, and the disagreement with state courts can be resolved in later litigation in the federal and state courts. If the decision of the Tenth Circuit is contrary to the decisions of the Fourth and Sixth Circuits, this Court can then review the federal conflict created by that decision in light of the rationale of that decision.

As such, the concerns recently voiced by Justice Stevens in voting to deny a petition for certiorari in *McCray v. New York*, 461 U.S. 961 (1983), are fully applicable to this case:

> I believe that further consideration of the substantive and procedural ramifications of

---

[3] It should be noted that the California Supreme Court's decision in *County of Mendocino* also was rejected by the California legislature. Shortly after *County of Mendocino* was rendered, the California legislature enacted a new law for the specific, stated purpose of overturning the *County of Mendocino* decision. *See* Assembly Bill No. 2635, 1984 Cal. Laws ch. 1386, Cal. Code § 11601.1, §3.

> the problem by other courts will enable us to deal with the issue more wisely at a later date. There is presently no conflict of decision within the federal system.

Id. at 962.

The issue of FIFRA preemption of local regulation of pesticide use presents a classic case for deferral of review by this Court. This Court has frequently noted that a conflict should be allowed to ripen before being reviewed by this Court. As Justice Frankfurter has written: "It may be desirable to have different aspects of an issue further illumined by the lower courts. Wise adjudication has its own time for ripening." *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 918 (1950).

II. THE COURT BELOW APPLIED ESTABLISHED PREEMPTION PRINCIPLES AND REACHED THE FAIR AND CORRECT RESULT

Petitioner strives mightily to convince this Court that the decision of the Sixth Circuit in this case is faulty and anomalous. *See* Petition for a Writ of Certiorari, at 13-18. This argument is belied by the careful and detailed analysis set forth in the opinion below. The Sixth Circuit applied standard preemption analysis to the question presented, and reached the result required by the language, legislative history, and administrative construction of FIFRA.

Petitioner seeks to avoid the lower courts' careful preemption analysis by positing a more strict standard in analyzing federal preemption of state and local police powers. *See* Petition for a Writ of Certiorari, at 13-14. Yet, this Court has never held that a different analysis applies or that police power areas are

somehow shielded from preemption. *See Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). If congressional intent so commands, police power areas are preempted just as any other area of state and local power. *Id. Cf. Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 292 (1981) ("This Court has upheld as constitutional any number of federal statutes enacted under the commerce power that pre-empt particular exercises of state police power.") (citations omitted).

Here, the Sixth Circuit properly found clear congressional intent to preempt local regulation of pesticide use. The court noted that FIFRA is a comprehensive statute which expressly confers regulatory power upon the federal government and the states, but withholds such power from local governments. *See* App. 4a-5a, 10a (citing 7 U.S.C. §§ 136(aa), 136f(b), 136r(b), 136t(b), 136v). The court further found that the preemptive intent demonstrated by the statutory framework is confirmed by the legislative history of the 1972 amendments to FIFRA. App. 5a-6a, 9a-12a. This conclusion is amply supported; the prevailing committee reports in both the House and Senate affirmatively rejected local regulation of pesticide use. *See* H.R. Rep. No. 511, 92d Cong., 1st Sess. at 16 (1971); S. Rep. No. 838, 92d Cong., 2d Sess., *reprinted in* 1972 U.S. Code Cong. & Admin. News 3993, 4008.[4] As the court below noted, the committee

---

[4] Petitioner incorrectly suggests that the legislative history reflects a "stalemate" and lack of "definitive resolution" over whether to preempt local regulation. *See* Petition for a Writ of Certiorari, at 5, 13. There was no dispute in the House of Representatives, however; the report of the House Agriculture Committee clearly expresses preemptive intent. *See* H.R. Rep.

reports expressed "the belief that the state and the federal governments could regulate pesticides adequately without subjecting the pesticide industry to thousands of regulatory jurisdictions." App. 5a.

Petitioner's second argument is that the preemptive intent does not extend to the type of local regulation at issue here, which petitioner describes as "public notice" regulation. *Id.* at 14-18.[5] This argument, which

---

511, *supra*, at 16. While Senate committees voiced differing views on the issue, it was the report of the Senate Agriculture and Forestry Committee—which explicitly stated that FIFRA "should be understood as depriving such local authorities and political subdivisions of any and all jurisdiction over pesticides and the regulation of pesticides," S. Rep. No. 838, *reprinted in* 1972 U.S. Code Cong. & Admin. News at 4008—that was placed in the Congressional Record the day of the Senate vote and that represents the prevailing Senate view. *See* 118 Cong. Rec. S15893 (daily ed. Sept. 26, 1972).

[5] Petitioner inaccurately states that the district court in *Maryland Pest Control Ass'n v. Montgomery County*, 646 F. Supp. 109 (D. Md. 1986), *aff'd*, 822 F.2d 55 (4th Cir. 1987), "never considered whether this congressional intent to preempt local regulation extended to matters, such as public notice, that are wholly outside FIFRA's reach." Petition for a Writ of Certiorari, at 8. In fact, the *Maryland Pest Control* court considered and rejected *precisely* the argument advanced by Petitioner. The court stated:

> Defendants make a final contention that even assuming that local governments are not authorized under FIFRA to regulate the sale and use of pesticides, the ordinances in question here do not constitute such regulation. They argue that the ordinances are simply consumer information legislation. A rose (or as the plaintiffs see the legislation, a thorn) by any other name is still a rose, and the ordinances, however characterized by defendants, clearly constitute regulation. They require commercial applicators of federally reg-

relies upon a mislabeling of the Milford ordinance, fails.

In this case, the Milford ordinance clearly regulates pesticide "use," and the Sixth Circuit so found. App. 7a-8a. The ordinance is directly solely at "users of pesticides," a phrase defined to mean any person "who applies or causes pesticides to be applied . . . ." Ordinance No. 197, § 1(B)(1), App. 35a. Moreover, the ordinance imposes mandatory requirements governing the use and application of pesticides within Milford, and *requires* registration, *requires* advance notification, and *requires* postings after pesticide applications. *Id.* §§ 3(A), 5(A), 5(B), App. 36a, 38a-39a. If any of these requirements is not met, the "user of pesticides" who makes the application is subject to penalties in the nature of fines. *Id.* § 7, App. 39a.

The type of regulation attempted by Milford plainly falls within the regulatory ambit of FIFRA. Federal courts, like the court below, have concluded that FIFRA is a "comprehensive regulatory statute," which regulates "the *use*, as well as the sale and labeling, of pesticides." *Ruckelshaus v. Monsanto Co.*, 467 U.S. at 991-92 (emphasis added). For purposes of FIFRA, "use" of pesticides includes *application* of

---

> ulated pesticides to post property to which pesticides are applied and to disseminate information to their customers regarding the application of the pesticides. If these requirements are not met, the applicators are subject to fine. Clearly the ordinances are intended to control conduct concerning the use of federally registered pesticides and constitute "regulation" which may be imposed under FIFRA only by legislation enacted by the Maryland General Assembly.

646 F. Supp. at 113.

pesticides. *See* 7 U.S.C. §§ 136(e), 136(ee); *see also* 7 U.S.C. § 136b(a); 40 C.F.R. §§ 171.1-171.11.

Milford also is incorrect in suggesting the "public notice" regulation it seeks has not been attempted under FIFRA. The EPA explicitly interprets FIFRA to empower it to enact regulations relating to posting and notice requirements. In July 1988, the EPA proposed changes to its regulations governing worker protection from agricultural pesticides which would specify what notification is required, whether the warning must be oral or posted, and what language and symbols the warning must contain. *See* EPA Worker Protection Standards for Agricultural Pesticides, 53 Fed. Reg. 25970 (to be codified at 40 C.F.R. §§156 and 170).[6] Furthermore, the regulatory framework established by FIFRA does not confine the ability to regulate pesticide use to the EPA. Under the statute, *states* are explicitly granted authority to en-

---

[6] In the same proposed regulation, the EPA stated its interpretation of "use" under FIFRA:

> The regulation incorporates a definition of "use" which covers numerous activities in addition to application of pesticides, all of which the Agency has determined are necessary steps to assure the safe use of pesticides and the prevention of unreasonable adverse effects on workers [§ 170.9(a)]. These activities occur prior to application, during application, and after application. This definition of "use" includes, but is not limited to, application, allowing or arranging for application, making necessary preparations for application, supervising application, and taking any required post-application actions.

53 Fed. Reg. at 25979. The EPA thus construes FIFRA to cover precisely the types of activities regulated by the Milford ordinance, and defines those activities as the "use" of pesticides.

act "public notice" regulation of pesticide use, and some have already done so. *See New York State Pesticide Coalition, Inc. v. Jorling*, 874 F.2d 115, 117 (2d Cir. 1989) (upholding New York "public notice" regulation). In short, the FIFRA scheme permits *statewide* pesticide regulation which fully addresses the concerns which apparently motivated the Milford ordinance, while honoring Congress' intent to avoid piecemeal, potentially inconsistent, and unduly burdensome regulation of pesticide use by thousands of local governments.

Finally, petitioner's attempt to characterize the preemption decision below as overbroad, by assuming areas of regulation precluded by the decision, does not advance this Court's analysis. The specific areas and types of regulation noted by petitioner, *see* Petition for a Writ of Certiorari, at 17-18—none of which are at issue in this case—are already subject to regulation by the federal government and the states under FIFRA. There is simply no "gap" in the comprehensive sweep of the FIFRA regulatory scheme which permits the intrusion of local government regulation.

CONCLUSION

The conflict alleged in the petition is neither significant nor ripe for review by this Court, and the decision below applied well-settled peremption analysis and reached a fair and correct result. The petition for a writ of certiorari should be denied by this Court.

Respectfully submitted,

JOSEPH D. LONARDO
VORYS, SATER, SEYMOUR AND PEASE
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-6311

Attorneys for Respondent